THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.307 of 2007

Date: 22-02-2007.

Between :

M/s.Siddique and Brothers Industry Oil Mill, Bhainsa,
rep. by its Managing Partner.

.....Petitioner

And

Commercial Tax Officer, Nirmal Circle, Adilabad District.

.....Respondent.

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.307 of 2007

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

A vacate stay petition being WVMP.No.288 of 2007 has been filed, but with the consent of the learned counsel for the parties, the writ petition itself is disposed of as the pleadings are complete.

The grievance of the petitioner is that a final assessment order was passed for the year 1993-94. After discussing the whole issues, the Commercial Tax Officer took note of the fact that the assessee had claimed exemption on turnover of Rs.21,91,750/- and the Commercial Tax Officer noted—

> *"The exemption is allowed on the following turnovers as detailed below:*
>
> *Rs.3,64,100=00 Represents Qtls.700.00 of cotton seed sales in the inter state trade which is being*

assessed separately under CST Act. Hence allowed exemption.

Rs.18,27,500=00 Represents Qtls.5270.40 of cotton seed cake sent out side the State on consignment basis which is being assessed separately under CST Act. Hence allowed exemption.

Rs.21,91,749=00: Exempted turnover."

Then, giving the reasons, he records the final conclusion as—

"In the circumstances explained above the assessee are eligible for tax holiday as they have not exceeded the declarated fixed capital investment upto the year 93-94.

Therefore the following turnovers are proposed to determine the assessment of the assessee for the year 93-94 under APGST Act.

C.T.O.

Rs.56,04,280=00

E.T.O.

Rs.21,91,750=00

N.T.O.

Rs.34,12,530=00

1. W.C.Seed Rs.34,12,530=00 -do- @ 5.50% Tax Rs.1,87,690=00.

Availment of Tax Holiday

1992-93 Rs. 26,295=00

1993-94 Rs. 1,77,790=00

Total Rs. 2,04,085=00

Total tax payable Rs.1,87,690=00

Tax paid Rs. 9,900=00

Tax payable Rs.1,77,790=00

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Then he also directed issuance of notice in Form B-3 for demand.

If the Commercial Tax Officer had come to the conclusion that the assessee was eligible for tax holiday, then we do not understand how he could raise demand and come to the conclusion that the assessee was to pay a tax of Rs.1,77,790=00. The learned counsel for petitioner submits that this order became final and was passed in the year 1997. No notices were issued to the petitioner till the impugned notice, which was issued on 25th of January 2006. The learned Government Pleader for Commercial Taxes, however, submits that notices were given earlier also, but without going into that question, we have seen from the counter affidavit that nothing has been said about the final assessment order by the Commercial Tax Officer. He has not at all

explained as to how he could lay a liability of paying tax on the petitioner when he had come to a conclusion that the assessee was eligible for tax holiday. Since the respondent himself had come to the conclusion that the assessee was eligible for tax holiday, the demand could have not been raised at all.

For these reasons, we allow the writ petition and set aside the impugned notice.

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BILAL NAZKI, J

22nd February 2007.

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NOOTY RAMAMOHANA RAO, J

ajr